

REMARKS

The present communication responds to the non-final Office Action of June 21, 2006. In it, claims 30-31 and 38 were rejected.

In this communication, claim 38 is canceled.

Objection to claims 30 and 38

Claims 30 and 38 were objected to as being identical claims. The claim objections are rendered moot in view of the cancellation of claim 38.

Rejection under 35 U.S.C. § 101

Claims 30, 31 and 38 were rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The claim rejection is rendered moot in view of the cancellation of claim 38.

Rejection under 35 U.S.C. § 103

Claims 30, 31 and 38 were rejected under 35 U.S.C. § 103(a) over Korf (U.S. Patent 6,013,029) in view of Patsalos (U.S. Patent 5,607,390), Bergveld (U.S. Patent 6,463,312), and Say (U.S. Patent 6,128,519).

Regarding the primary reference, Korf, the Examiner correctly states that Korf does not disclose:

- 1) a supporting plate;
- 2) a supply and discharge tube that each include a porous membrane; and
- 3) a valve for preventing flow of fluid from the sensor back to the needle.

In further reference to Korf, the body fluid detector of Korf includes a detector 3 that is located adjacent to selector 7 in the downstream body 19, where the conduit running through the downstream body is straight. Therefore, Korf also does not disclose or suggest that the sensor is located at a "joint portion between the discharge tube and the outlet portion."

The cited references, Patsalow, Bergveld, and Say do not remedy this deficiency because none of the references disclose or suggest a joint portion for the sensor to be positioned in.

Say does not disclose the valve as claimed because the bioanalyte measurement system and method disclosed in Say includes a valve that prevents fluid flow in a fluid line from a pump 34 towards an adapter 28. In Fig. 1 of Say, it can be seen that fluid entering sensor 30 via catheter 55 can flow in reverse because valve 44 is positioned behind the sensor next to pump 34. Therefore, Say does not disclose or suggest a “valve positioned in the discharge tube adjacent to the joint portion for preventing a reverse flow of the dialysis fluid into the discharge tube”. This is because the claimed valve positioned in the discharge tube prevents a reverse flow of the dialysis fluid back into the discharge tube, and sensor is positioned at the joint portion where the discharge tube and the outlet portion are coupled. Therefore, the claimed valve is positioned in front of the sensor.

Korf, Patsalos, Bergveld, and Say provide no motivation to adapt the body fluid monitor of Korf with the supporting plate of Patsalos, with the supply and discharge tube that have a porous membrane of Bergveld, and with the valve for preventing flow of fluid from the sensor back to the needle from Say. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *MPEP* § 2143.01. Further, none of the Korf, Patsalow, Bergveld, and Say references provide any motivation or expectation of success to adapt the Korf body fluid monitor to provide the device for measuring fluids in the body of the present invention where the device, *inter alia*, includes a supply tube and a discharge tube each having a porous membrane, a support plate, an outlet portion coupled to the discharge tube at a joint portion positioned on the upper surface of the supporting plate, where the dialysis fluid containing constituents flows from the discharge tube to the outlet portion through the joint portion, a valve positioned in the discharge tube adjacent to the joint portion for preventing a reverse flow of the dialysis fluid into the discharge tube, and a sensor positioned in the joint portion between the discharge tube and the outlet portion.

Even if proper, which it is not, the asserted combination would not make the claimed invention obvious. If anything, it would lead to providing a body fluid sensor like Korf, except

that it would include a supporting plate from Patsalos, a U-shaped tube manufactured from a cellulose-acetate or a polycarbonate from Bergveld, and a valve from Say. But as discussed above, the cited references do not disclose or suggest that the sensor is positioned in a joint, nor do they disclose or suggest a valve positioned in the discharge tube adjacent to the joint portion for preventing reverse flow of fluid. The asserted combination therefore does not disclose or suggest the present invention.

Moreover, because the cited references do not disclose or suggest that the sensor is positioned in a joint, or that a valve is positioned in the discharge tube adjacent to the joint portion for preventing reverse flow of fluid, the Examiner has used the present invention as a blueprint for piecing together Korf, Patsalos, Bergveld, and Say. Accordingly, the Examiner has used impermissible hindsight, not established a *prima facie* case of obviousness.

For at least the preceding reasons, the rejection under § 103 should be reconsidered and withdrawn.

Dependent Claim

Claim 31 depends from independent claim 30, and is patentable over the art of record for at least the reasons set forth above, further in view of its additional recitations.

Conclusion

This paper does not generate any new claim fees, but a petition for an extension of time is submitted herewith. The Commissioner is hereby authorized to charge the appropriate fee of \$1020.00 to Deposit Account No. 04-1420. The Commissioner is also hereby authorized to charge any deficiencies associated with this paper or the petition to Deposit Account No. 04-1420.

The application now stands in allowable form, and reconsideration and allowance are requested.

Respectfully submitted,

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Date: December 19, 2006

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